

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services and Radio)
Services in the 220-222 MHz Land)
Mobile Band and Use of Radio)
Dispatch Communications)

GN Docket No. 94-90

To: The Commission

COMMENTS
OF
THE NATIONAL ASSOCIATION OF
BUSINESS AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. §1.405, hereby respectfully submits its Comments in the above-captioned proceeding.¹

I. BACKGROUND

Founded in 1965, NABER is a not-for-profit national trade association, headquartered in Alexandria, Virginia, committed to protecting, serving, and leading members of the mobile communications industry in their endeavors to effectively and efficiently provide communications support to the U.S. business community.

NABER represents businesses of all sizes from all facets of the industry (holding tens of thousands of licenses), through its six specially focused membership sections: Association for Private

¹59 FR 42563 (August 18, 1994). The deadline for submitting Comments and Reply Comments was extended by the Order, released September 16, 1994. 59 FR 49230 (September 27, 1994).

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Carrier Paging (APCP), Specialized Mobile Radio Alliance (SMRA), Association of Wireless Systems Integrators (AWSI), Site Owners and Managers Association (SOMA), Association of Communications Technicians (ACT), and the User Section. NABER also represents industry suppliers such as manufacturers and administers the industry's technician certification program. In addition, NABER is the FCC-certified frequency coordinator for the Business Radio Service and shares in the responsibility of coordinating the Special Emergency Radio Service.

In this proceeding, the Commission seeks comments on its proposal to eliminate the current eligibility restriction which prevents wireline common carriers from being the licensee of SMR and commercial 220 MHz systems.² In addition, the Commission proposes to eliminate the current restriction which prohibits cellular systems from offering dispatch service without routing such calls through "the switch".³

The Commission previously proposed to eliminate the wireline prohibition in PR Docket No. 86-3, however the Commission closed the proceeding as the record had become stale.⁴ Southwestern Bell ("SWB"), Bell Atlantic and US West were previously granted waivers of Section 90.603(c), and have sought to have permanent waivers granted as a result of the Commission's action in PR Docket No. 86-3. RAM Mobile Data ("RMD"), which is already the licensee of an

²See, 47 C.F.R. §90.603(c); 47 C.F.R. §90.703(c).

³47 C.F.R. §§22.519(a), 22.911(d).

⁴See, Order, PR Docket No. 86-3, 7 FCC Rcd 6879 (1992).

innovative 900 MHz system, has sought a waiver to permit a transfer of control of the corporation to BellSouth Corporation, a regional holding company. Cass Cable and American Paging, Inc. ("API") have requested waivers in order to become SMR operators.

II. COMMENTS

In its Comments in response to the various waiver requests, NABER stated that in light of the changes in the Communications Act,⁵ NABER believes that the Commission should undertake an immediate review of the continued necessity of Section 90.603(c) of the Commission's Rules. NABER did not oppose the continuation of the waivers granted to SBC, Bell Atlantic and US West. Further, NABER stated that the operations of the systems currently operated by SBC, Bell Atlantic and US West have not as yet caused any significant hardship to competitors in the respective markets.

In the case of RMD, NABER supported its Waiver Request. In the case of Cass Cable and API, however, NABER did not perceive any unique circumstances which would justify a waiver at this time.⁶ NABER stated that the Commission should encourage the entry of Cass Cable and API into the SMR industry through a rule making proceeding. Therefore, NABER believes it is now appropriate to expeditiously conduct this proceeding and for the Commission to review the waiver requests which have been filed.

⁵See, General Docket No. 93-252.

⁶See, WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

After consultation among NABER's SMRA Council Members, it is NABER's belief that it is now appropriate for the Commission to lift the wireline common carrier prohibition in the SMR/220 MHz services. NABER agrees with the Commission that the risk of competitive harm from wireline carriers using SMR frequencies has diminished as the service has become established and frequencies have become utilized. As stated by the Commission, wireline entry is likely to be limited to acquiring existing SMR businesses with constructed licenses. It would therefore be difficult for such entities to acquire a significant portion of spectrum except through consolidation.

Consolidation in a mature market would have less competitive impact on existing providers than permitting wireline entities unfettered access to bare spectrum which could be warehoused. NABER agrees that the Commission has sufficient measures available to review possible anti-competitive actions when transfers or assignments are filed.

Although NABER supports the elimination of the wireline entry prohibition, NABER does **not** support the Commission's proposal to eliminate the common carrier dispatch prohibition for cellular carriers. As detailed below, NABER believes that there is sufficient cause for the Commission to maintain the restriction.

A cellular system is afforded over three hundred clear channels throughout a wide-area. If a cellular system devotes even a portion of this spectrum to "all-call" dispatch, the cellular system would have the ability to unfairly compete with local

dispatch systems (both CMRS and PMRS). Such cellular systems would have the ability to provide service to dispatch users as a "loss leader", below cost, in order to drive the smaller SMR system out of business. This is particularly true in rural areas, where the cellular system may still have a significant amount of unused capacity.

The Commission has asked whether permitting cellular systems to offer dispatch service will lead to more innovative service offerings and lower costs for dispatch customers. The last several years clearly demonstrate that dispatch service has become the most innovative and spectrum efficient service offering of all wireless communications. Permitting two additional, well-funded, spectrum-rich competitors in each market would not significantly provide additional customer choices and lower customer costs. Rather, it may actually lead to fewer customer choices and higher costs through the ability of the cellular provider to drive SMR operators out of business.

There is already sufficient competition among dispatch providers to ensure that marketplace forces provide customers with the most efficient and least costly service possible. As the Commission has learned recently from independent SMR Operators regarding GN Docket No. 93-252, there is robust dispatch competition in many markets by a variety of operators, large and small. While there has been significant consolidation of SMR providers, the fact remains that many customer options still exist in each area. Independent operators at 800 MHz, 900 MHz, 220 MHz,

470-512 MHz and in the 450 MHz band provide a wide range of dispatch options, from simple dispatch on shared channels costing a few dollars per month, to feature-rich dispatch service provided by digital operators. Permitting cellular competition in this area provides nothing for the consumer in the short-term, and may have devastating effects in the long-term.

The option of permitting common carrier licensees to provide dispatch service on a secondary basis would not resolve NABER's concerns. In this regard, the most practical manner in which a cellular system can provide "all-call" dispatch service is to configure the system in a different manner and dedicate a portion of the spectrum for dispatch service. As a result, interconnect and dispatch services would not be commingled on the same frequencies, thus rendering any distinction between primary and secondary service meaningless.

The Commission's second alternative of limiting the amount of spectrum which may be devoted by a common carrier to dispatch is also not workable. Placing the spectrum limit at the level which would inhibit an operator's ability to unfairly compete would be so small as to be cost prohibitive for the common carrier operator to implement. Placing the spectrum limit at the level which would be cost efficient for the common carrier operator would be too great to prevent unfair competition.

The Commission's third alternative to sunset the prohibition until April 10, 1996, while helpful, also does not significantly change the eventual impact. Even if the Commission lifts the ban

at this time, it can be expected that few cellular operators will be ready to provide such service much before that date because of the need to redesign systems and perform the actual reconfiguration. Thus, the delay would not significantly impact a cellular operator's planned system change-out and implementation. Further, it can be expected that the independent dispatch market will not be significantly different in sixteen (16) months.

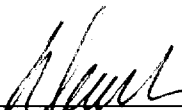
In contrast to the various Commission options, NABER does not suggest that cellular **licensees** should not be able to provide dispatch service. Rather, such service should not be provided over the cellular **system**. By lifting the current ban on wireline eligibility, which NABER supports, a cellular **licensee** can simply obtain non-cellular spectrum for providing dispatch service. Thus, if a cellular licensee wishes to provide dispatch competition, there is an avenue to begin offering such service.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

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